



## **GENERAL PROVISIONS FOR TIME & MATERIAL SUBCONTRACTS**

### **CLAUSE 1 – DEFINITIONS**

As used herein, the following terms shall have the indicated meanings:

- "Items" means the supplies and services subcontracted for under the Subcontract.
- "Government" means the United States Government;
- "DOE" means the U. S. Department of Energy;
- "University" means The Regents of the University of California, acting through the LBNL;
- "LBNL" means the Lawrence Berkeley National Laboratory;
- "Subcontract" means this Subcontract with the University;
- The term "Subcontractor" means the party who has entered into this Subcontract with the University;
- The lower case term "subcontractor" means the Subcontractor's subcontractor(s).

### **CLAUSE 2 – SCOPE OF SUBCONTRACT**

The scope of the Subcontract shall be limited to the acquisition of supplies and services on a time and material basis, which may include research, development, or demonstration work.

The Subcontract is entered into as a subcontract under the University's Prime Contract No. DE-AC02-05CH11231 with the Government, represented by the DOE, for management and operation of the LBNL and the performance of certain research and development work.

### **CLAUSE 3 – ACCEPTANCE OF SUBCONTRACT**

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all of the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not acceptable and shall constitute a proposal for modification of the Subcontract only and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

In the event the Subcontractor's business status indicated on the face of this Subcontract is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the University may cancel this Subcontract, without further obligation.

### **CLAUSE 4 – DOCUMENTS OF SUBCONTRACTOR**

The provisions of any quotation or other documents of the Subcontractor referenced in or incorporated as a part of this Subcontract are referenced or incorporated only for the purpose of specifying the nature of the materials, supplies, or services ordered, the price thereof, and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

### **CLAUSE 5 – FORCED, CONVICT, AND INDENTURED LABOR**

(a) By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

(b) Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.

(2) The Subcontractor may be removed from consideration for University subcontracts for a period not to exceed 360 days.

### **CLAUSE 6 – PACKAGING INSTRUCTIONS**

The Subcontractor shall suitably package the Items to prevent damage during handling and shipping. Any damage resulting from improper packaging, containerizing, or lack thereof shall be the liability of the Subcontractor, anything to the contrary notwithstanding. The Subcontractor shall indicate the University Subcontract number on each container or package. An itemized packing list shall be affixed to the outermost cover of each container or package.

The University encourages the use of biodegradable packaging materials. To assist in this endeavor, the Subcontractor is requested to use every reasonable effort to use biodegradable packaging materials for shipments to the University.

### **CLAUSE 7 – TITLE AND RISK OF LOSS**

Unless otherwise provided in the Subcontract, title to the Items purchased under the Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the Items shall remain with the Subcontractor until, and shall pass to the University upon:

- If F.O.B. Shipping Point: Completion of delivery to the carrier and any loading by the Subcontractor.
- If F.O.B. Destination: Completion of delivery or commencement of unloading by the University at the delivery point.

However, (1) if the Subcontract provides for formal acceptance of any Items by the University, then title to such Items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to Items that are non-conforming shall remain with the Subcontractor until acceptance of the Items by the University as conforming.

### **CLAUSE 8 – SHIPMENTS FOR UNIVERSITY'S ACCOUNT**

Except as otherwise provided in the Subcontract, all shipments by the Subcontractor for the University's account shall be (1) shipped FOB Shipping Point and marked as shipped "For the U. S. Department of Energy;" (2) shipped at the maximum declared value for the lowest applicable transportation rate or classification, and the bill of lading shall so note; and (3) self-insured by the University and not insured by the Subcontractor. Airway bills shall be marked with the appropriate "Government Package" entry. Shipping costs in excess of those per the "Shipping Instructions" specified on the face of this Subcontract shall be deducted from the Subcontractor's invoice(s).

### **CLAUSE 9 – TRAVEL**

This Subcontract may include the estimated cost of round trip travel deemed necessary by the LBNL Technical Coordinator. Only actual travel costs will be paid, and any such costs must be paid in accordance with the Federal Travel Regulations and Berkeley Laboratory Travel policies, attached as needed. Any Foreign Travel (any travel outside of the United States and its territories and possessions) will require prior written approval by LBNL.

### **CLAUSE 10 – INVOICES**

The Subcontractor shall submit its invoice at the time of final shipment, unless otherwise provided in the Subcontract. The invoices shall reference the Subcontract Number and include a complete description of the materials, supplies, services; prices; ship dates; and the name of the University's Procurement Specialist. Failure to comply with any of these requirements may result in a delay in payment of the invoices.

### **CLAUSE 11 – PAYMENT**

Unless otherwise provided in the Subcontract, Subcontractor shall be paid within 30 days after receipt of the Subcontractor's properly

submitted invoice, for Items delivered and accepted or services rendered and accepted. Any offered discount shall be taken if payment is made within the discount period indicated by the Subcontractor. Invoices must be accompanied by transportation receipts, or facsimiles, if transportation is payable and charged as a separate item.

#### **CLAUSE 12 – TAX ASSESSMENT NOTIFICATION**

The Subcontractor agrees to notify the University of any State or local law tax, fee or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract for which an exemption is claimed by the University or concerning which the Subcontractor has reason to believe or the University has advised the Subcontractor that such tax, fee, or charge is or may be inapplicable or invalid. The Subcontractor further agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.

#### **CLAUSE 13 – BANKRUPTCY**

If the Subcontractor enters into any proceeding related to bankruptcy, it shall give written notice to the University's Procurement Specialist via certified mail within five days of initiation of the proceeding. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the LBNL purchase orders, subcontracts, or agreements affected.

#### **CLAUSE 14 – EXCUSABLE DELAYS**

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics quarantine, restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the University in writing as soon as reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give the University written notice of the cessation of such occurrence.

#### **CLAUSE 15 – WORK ON UNIVERSITY OR GOVERNMENT PREMISES**

*(Applicable to Subcontracts involving Subcontractor's performance at University or Government-owned sites or facilities.)*

(a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each, and that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.

(b) **Indemnify, Defend and Hold Harmless.**

(1) The Subcontractor shall indemnify, defend and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborers', materialmen's, and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government; and

(2) Promptly notify the University, in writing, of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, suits, or liens and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of

such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means. The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof, as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed; but the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

(c) **Cleaning Up.** The Subcontract shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors; and, at the completion of the work, it shall remove all rubbish from and about the buildings and all of its and its lower-tier subcontractors' tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and its lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or, in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

(d) **Employees.**

(1) The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best-qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall remove such person from the work under the subcontract, and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

(2) It is understood that if employees of the University shall perform any acts for the purpose of discharging the responsibility undertaken by the Subcontractor hereunder, whether requested to perform such acts by the Subcontractor or not, such employees of the University while performing such acts shall be considered the agents and servants of the Subcontractor subject to the exclusive control of the Subcontractor.

(e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workers' Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors' compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.

(f) **Environment, Safety, Health, and Fire Protection.**

(1) The Subcontractor shall take all reasonable precautions in the performance of the work under this subcontract to protect the health and safety of employees and members of the public; minimize danger from all hazards to life and property; and, to the extent compliance is required, shall comply with all health, safety, fire protection, and environmental regulations and requirements, including reporting requirements, of the University and DOE. The University shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. This corrective action shall include, at a minimum, that the Subcontractor submit a management program and implementation plan to the University for review and approval within 30 days after the date of award of this subcontract. In the event that the Subcontractor fails to comply with said regulations or requirements of the University or the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the University. The

Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

(2) The Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon University or Government premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the University, or other persons.

#### **CLAUSE 16 – TECHNICAL DIRECTION AND CHANGES**

(a) Performance of the work under this Subcontract shall be subject to the technical direction of the University Technical Representative. The Subcontractor shall promptly proceed with the performance of technical direction of the nature prescribed by this article issued by the University Technical Representative.

(b) The term "technical direction" is defined to include directions to the Subcontractor within the Scope of Work of the Subcontract which: (1) clarify the desired work emphasis between work areas or tasks; (2) direct the pursuit of certain lines of inquiry; (3) assist in the interpretation of drawings, specifications, or technical portions of the work description; or (4) fill in details necessary to perform and complete the Scope of Work. All technical direction must be issued in writing by the University Technical Representative.

(c) The University Technical Representative is not authorized to issue any technical direction which would: (1) constitute an assignment of work outside the general scope of the work covered by this Subcontract; (2) change the description of the work to be performed or any applicable drawings, designs, and specifications; (3) change the time or place of performance; the method of shipment or packaging, or the place of inspection, delivery or acceptance; (4) increase the estimated cost for performance of the work, the fixed fee, or the time required for performance of the work; (5) change any expressed term or condition of the Subcontract; or (6) unreasonably interfere with the Subcontractor's ability to perform and complete the work.

Any such technical direction must first be authorized by a written change order to this Subcontract issued by the University Procurement Specialist, as provided in the clause of the GENERAL PROVISIONS entitled CHANGES–TIME-AND-MATERIALS OR LABOR-HOUR CONTRACTS.

(d) If any instruction or direction by the University Technical Representative falls within one of the types described in Paragraph C, above, the Subcontractor shall not proceed to act on such technical direction and shall promptly notify the University Procurement Specialist.

Upon receipt of a notification from the Subcontractor, the University Procurement Specialist shall promptly advise the Subcontractor either: (1) that the technical direction is within the general scope of the Subcontract and does not constitute a change under the GENERAL PROVISIONS entitled CHANGES–TIME-AND-MATERIALS OR LABOR-HOUR CONTRACTS and to proceed to act on such technical direction; or (2) that the technical direction is not within the general scope of the Subcontract or would constitute a change under the GENERAL PROVISIONS entitled CHANGES–TIME-AND-MATERIALS OR LABOR-HOUR CONTRACTS, and not to proceed to act on such technical direction unless and until the University issues a written change order.

#### **CLAUSE 17 – APPROVAL OF TECHNICAL DATA**

(a) If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data for approval by the University prior to Subcontractor performance, the approval of the data by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the

requirements of this Subcontract, except as specified below. Any work done prior to such approval shall be at the Subcontractor's risk.

(b) If the data includes any variations from the Subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission of the data. If the University approves any such variation(s), a change order to the Subcontract shall be issued by the University and, if appropriate, a bilateral modification to the Subcontract shall be negotiated.

#### **CLAUSE 18 – QUALITY OF SUPPLIES**

Any supplies furnished by the Subcontractor in performance of the work shall, as a minimum: (1) be new (not used or reconditioned) and not of such age or so deteriorated as to impair their usefulness or safety; (2) be as warranted; and (3) not contain any counterfeit or suspect materials, parts, or components. Types of counterfeit or suspect materials, parts, and components typically include, but are not limited to: electrical components, piping, fittings, flanges, and fasteners. The University will not accept any work involving the furnishing of any supplies found by the University not to conform to these minimum requirements, notwithstanding any inspection or acceptance of delivery by the University, unless such condition is specifically approved in writing by the University Procurement Specialist.

#### **CLAUSE 19 – WALSH-HEALEY PUBLIC CONTRACT ACT**

If this Subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C §§ 34 through 45), there are hereby incorporated by reference all stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

#### **CLAUSE 20 – PRICING OF ADJUSTMENTS**

When costs are a factor in any determination of a Subcontract price adjustment pursuant to the "Changes" clause or any other provision of this Subcontract, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the Federal Acquisition Regulation (48 CFR Part 31), as supplemented or modified by DEAR Part 931(48 CFR Part 931) then in effect.

#### **CLAUSE 21 – WARRANTY**

The Subcontractor warrants that the supplies and services furnished under this Subcontract shall be: (1) free from defects in workmanship, material, and Subcontractor's design or engineering contributions; (2) of the most suitable grade and exactly as specified in the descriptions and specifications of this Subcontract and the affirmations and promises made by the Subcontractor in its proposal; and (3) merchantable and fit for the particular purpose, if any, described in the Subcontract. The Subcontractor further warrants that the data and documentation provided by the Subcontractor or its suppliers shall be complete and accurate, and may be relied upon by the University.

The Subcontractor shall correct all nonconformances with this warranty discovered within one year after formal acceptance or initial use of the supplies and services. Such corrective action shall be at the Subcontractor's expense, including any related transportation costs. The limited warranty period shall not apply in the case of latent defects, specific failure to comply with the terms of this Subcontract, or fraud or such gross mistakes as amount to fraud.

#### **CLAUSE 22 – RELEASE OF INFORMATION**

The subcontractor agrees that information regarding this Subcontract and the name of the University, the Lawrence Berkeley National Laboratory, or the Government shall not be used in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the University Procurement Specialist.

#### **CLAUSE 23 – ASSIGNMENTS**

(a) This Subcontract may be assigned by the University to the U.S. Government or a successor-in-interest to the University.

(b) Except as to the assignment of payments due hereunder, the Subcontractor shall have no right, power, or authority to sell, mortgage, transfer, or assign this Subcontract, any portion hereof, any interest herein, or any claim hereunder, nor shall it allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

#### **CLAUSE 24 – DISPUTES**

(a) Except as otherwise provided in this Subcontract, any non-routine claim under this Subcontract not resolved in the ordinary course of business shall be referred in writing to the University's Procurement Specialist and the executive management of the Subcontractor with the authority to settle the dispute. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of the Subcontract, in accordance with its terms and conditions.

(b) Any unresolved dispute with a value under \$100,000 relating to the Subcontract (whether contract, tort, or both), or the breach of the Subcontract shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.

(c) The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA.; (2) the location for all arbitrations shall be in Alameda County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

(d) The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the GOVERNING LAW AND VENUE clause.

#### **CLAUSE 25 – WORKER SAFETY AND HEALTH**

*(Applicable when the subcontract involves work to be performed on a University or Government site.)*

Subcontractor and its lower tier subcontractors shall comply with the Department of Energy's Worker Safety and Health Program regulation, 10 CFR 851, which enforces worker safety and health requirements including, but not limited to, standards of the Occupational Safety and Health Administration as incorporated in the LBNL Worker Safety and Health Program at <http://www.lbl.gov/ehs/pub3000/>. Violations of safety and health provisions of 10 CFR 851 may subject Subcontractor and its lower tier subcontractors to penalties. Subcontractor and its lower tier subcontractors shall also follow the provisions of its Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all LBNL safety procedures and policies communicated to it the Subcontractor.

Subcontractors shall ensure that those workers who require unescorted/unbadged access to the LBNL site complete the General Employee Radiation Training (GERT), as required by 10CFR835. The on-line training is available at:

<http://ehswprod.lbl.gov/EHSTraining/GERT/default.asp>.

Hard copies of the training information are available at the Site Access office in Building 65B and at:

[http://www.lbl.gov/ehs/html/training\\_pdf/GERT\\_PDFONLY.pdf](http://www.lbl.gov/ehs/html/training_pdf/GERT_PDFONLY.pdf).

#### **CLAUSE 26 – INJURY REPORTING**

*(Applicable to Subcontractors with ten or more employees working at University or Government-owned sites or facilities [herein called LBNL Site] except for work involving construction and contract labor when*

*Subcontractor's employees receive specific task assignments from University employees.)*

(a) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death or hospitalization shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(b) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

#### **CLAUSE 27 – LAWS AND REGULATIONS**

The Subcontractor and its employees and subcontractors shall at all times comply with all applicable state and federal laws, ordinances, statutes, codes, rules, and regulations, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, and safety (including OSHA).

#### **CLAUSE 28 – GOVERNING LAW AND VENUE**

This Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County (or in the Superior Court of Contra Costa County if the underlying action occurred at LBNL's JGI Site).

#### **CLAUSE 29 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications; (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

#### **CLAUSE 30 – CLAUSES INCORPORATED BY REFERENCE**

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the University's Purchase Order or Subcontract (hereinafter "Subcontract") as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.227-1 & Alt. I, 52.227-2, 52.227-3, 52.227-14, 52.227-19, and 52.245-1 and DEAR clauses 952.227-11, 952.227-13, and 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR clause 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title. As used in DEAR clauses 952.227-9 and 970.5232-3, the term "DOE" shall mean DOE and the University. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

#### APPLICABLE TO ALL SUBCONTRACTS

FAR 52.211-17	DELIVERY OF EXCESS QUANTITIES (SEP 1989), if the Subcontract is for supplies.
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002) (Note: Download the EEO Poster at: <a href="http://www.dol.gov/esa/regs/compliance/posters/eeo.htm">http://www.dol.gov/esa/regs/compliance/posters/eeo.htm</a> )
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (APR 2006)
FAR 52.225-1	BUY AMERICAN ACT – SUPPLIES (JUN 2003)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)
DEAR 952.204-71	SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994) (See list at: <a href="http://www.lbl.gov/ufva">www.lbl.gov/ufva</a> )
FAR 52.227-3	PATENT INDEMNITY (APR 1984)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (JUN 1987), with Alternate V, and DEAR 927.409 paragraphs (a) and (d)(3).  If delivery of Restricted Computer Software is required, then Alternate III shall apply. If delivery of Limited Rights Data is required, then Alternate II shall apply, with the following five purposes added at the end of paragraph (a) of the clause: <ol style="list-style-type: none"><li>1. Use (except for manufacture) by other contractors;</li><li>2. Evaluation by non-government evaluators;</li><li>3. Use (except for manufacture) by other contractors participating in the Government's program of which the specific subcontracts is a part, for information and use in connection with the work performed under each subcontracts;</li><li>4. Emergency repair or overhaul work; and</li><li>5. Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.</li></ol>
DEAR 952.227-9	REFUND OF ROYALTIES (FEB 1995), if "royalties" are paid under the Subcontract by the Subcontractor, or a subcontractor at any tier.
FAR 52.227-19	COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987), if the Subcontract involves the acquisition of commercially available computer software and a GSA Federal Supply Schedule Contract is not applicable.
DEAR 952.227-82	RIGHTS TO PROPOSAL DATA (APR 1994), if the awarded Subcontract is based upon a technical proposal.
FAR 52.232-7	PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (AUG 2005)
FAR 52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
FAR 52.242-15	STOP-WORK ORDER (AUG 1989)
FAR 52.243-3	CHANGES – TIME-AND-MATERIALS OR LABOR-HOURS (SEP 2000)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (SEP 2006)
FAR 52.245-1	GOVERNMENT PROPERTY (JUN 2007)
FAR 52.246-6	INSPECTION – TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)

FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006), if the Subcontract involves ocean transportation of supplies other than "commercial items."
FAR 52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)(SHORT FORM) (APR 1984)
FAR 52.249-6	TERMINATION (COST REIMBURSEMENT) (MAY 2004), with Alternate IV (SEP 1996)
FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)
DEAR 970.5208-1	PRINTING (DEC 2000), if printing is required under the Subcontract
DEAR 952.203-70	WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000), if the Subcontract involves any work at a DOE owned or leased facility
DEAR 970.5223-2	AFFIRMATIVE PROCUREMENT PROGRAM (MAR 2003)

#### APPLICABLE IF THE SUBCONTRACT EXCEEDS \$2,500

FAR 52.222-41	SERVICE CONTRACT ACT OF 1965, AS AMENDED (JUL 2005), if the Subcontract is principally for the furnishing of services through the use of "service employees", unless the Subcontract qualifies for class deviation under Section 4(b) of the McNamara-O'Hara Service Contract Act.
FAR 52.222-44	FAIR LABOR STANDARDS ACT AND SERVICES CONTRACT ACT - PRICE ADJUSTMENT (FEB 2002), if FAR Clause 52.222-41 applies.

#### APPLICABLE IF THE SUBCONTRACT IS FOR \$10,000 OR MORE

FAR 52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

#### APPLICABLE IF THE SUBCONTRACT EXCEEDS \$25,000

DEAR 970.5223-4	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2
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#### APPLICABLE IF THE SUBCONTRACT EXCEEDS \$100,000

FAR 52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006). Use Alternate 1 (JUL 1995) if the Subcontract is for "commercial items".
FAR 52.203-7	ANTI-KICKBACK PROCEDURES (JUL 1995), unless the Subcontract is for "commercial items," excluding paragraph (c)(1).
FAR 52.203-10	PRICE OR FEE REDUCTION FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
FAR 52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)
DEAR 952.209-72 & ALT 1	ORGANIZATIONAL CONFLICT OF INTEREST (JUN 1997), with Alternate I, if the Subcontract involves advisory and assistance services, engineering or technical consulting, management support or professional services, or other services or activities where an OCI may exist or arise. The period of ineligibility shall be five years.
FAR 52.219-6	NOTICE OF TOTAL SMALL-BUSINESS SET-ASIDE (JUN 2003), if the Subcontract results from a small business set-aside.
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)



FAR 52.219-14 LIMITATIONS ON SUBCONTRACTING (DEC 1996), if the Subcontract results from a small business set-aside.

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005), if the Subcontract involves mechanics or laborers and is for other than "commercial items."

FAR 52.222-35 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006), if the Subcontract value is \$100,000 or greater.

FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006), if the Subcontract value is \$100,000 or greater.

FAR 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004) (Note: Download the "Beck" Poster at: <http://www.olms.dol.gov>)

FAR 52.223-14 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995) This clause only applies if the Subcontract is not for research, development or demonstration work.

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

FAR 52.229-3 FEDERAL, STATE AND LOCAL TAXES (APR 2003)

FAR 52.244-2 SUBCONTRACTS (AUG 1998), with Alternate I (JAN 2006). Insert in paragraph (e): "Any subcontract or purchase order for other than "commercial items" exceeding the simplified acquisition threshold. ('Commercial Item' has the meaning contained in FAR 52.202-1, Definitions."

FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003), if the Subcontract involves international air transportation.

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000), excluding Paragraph (h). Applicable if costs incurred are a factor in determining the amount payable.

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$500,000

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007), if the Subcontract value exceeds \$550,000, unless the Subcontractor is a small business or there are no subcontracting possibilities.

DEAR 970.5226-2 WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000), unless the Subcontract is for "commercial items."

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$650,000

FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997), if cost or pricing data is required.

FAR 52.215-13 SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT (1997)

APPLICABLE IF THE SUBCONTRACT INDICATES IT IS FOR RESEARCH, DEVELOPMENT, OR DEMONSTRATION (RD&D) WORK OR DESIGN WORK INVOLVING NON-STANDARD TYPES OF CONSTRUCTION

FAR 52.227-1 AUTHORIZATION AND CONSENT (JUL 1995), with Alternate I (APR 1984)

FAR 52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987) Applies to all Subcontracts except those with Universities or Colleges under \$500,000.

DEAR 952.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995), if the Subcontractor is a Domestic Small Business or Non-Profit Organization, as defined at FAR 27.301.

DEAR 952.227-13 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SEP 1997), if the Subcontractor is not a Domestic Small Business or Non-Profit Organization, as defined at FAR 27.301.

DEAR 952.227-84 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (FEB 1998)

(END OF GENERAL PROVISIONS)